

**APPENDIX A.5**  
**PLANNING DIRECTOR INTERPRETATION**  
*Interim Procedures*

*Endangered Species Act (ESA) Listing for Chinook Salmon and Bull Trout*

**PDI NUMBER:** 2-2000

November 28, 2000

**SUBJECT:** This rule is issued in response to the National Marine Fisheries Service (NMFS) listing of Chinook Salmon as a threatened species and the U.S. Fish and Wildlife Service (USFWS) listing of Bull Trout as a threatened species. The purpose of this administrative rule is to implement and enforce the provisions of the City's environmentally sensitive areas regulations, EMC 19.37. This rule will provide an interim procedure for the review of proposed activities, both private and public, when Chinook Salmon or Bull Trout habitat will be impacted by a development proposal.

**Authority:** Section 41.040 of the City of Everett Zoning Ordinance provides for the Planning Director to "promulgate administrative rules, procedures, and interpretations consistent with the terms of this Ordinance."

**Background:**

- Chinook Salmon was listed as a threatened species under the Federal Endangered Species Act (ESA) on March 16, 1999. Bull Trout was listed as a threatened species by the U.S. Fish and Wildlife Service in November 1999.
- The City's environmentally sensitive areas regulation, EMC 19.37, includes a number of regulations that provide for the protection of salmon or any State or Federal listed species.
- EMC 19.37.170 Fish and Wildlife Conservation Areas, provides for the protection and enhancement of "Fish and Wildlife Conservation Areas" through sound habitat management practices.
- EMC 19.37.170.A, requires an evaluation of any development proposed "on or adjacent to a habitat of primary association." This section requires that "When a development is proposed on or adjacent to a habitat of primary association, the applicant shall prepare a HMP."
- EMC 19.04.020 (the zoning ordinance) defines Habitats of Primary Association as "the critical component(s) of the habitats of federally or state listed endangered, threatened, candidate, sensitive, priority, and monitored wildlife or plant species." Since Chinook Salmon and Bull Trout have been listed, any activity potentially impacting a critical component of Chinook Salmon or Bull Trout habitat would be included under this definition.

Since Chinook Salmon are listed as a threatened species by NMFS and Bull Trout are listed as a threatened species by USFWS, any project that potentially impacts a habitat of primary association of either species would be subject to the requirements of Section 37.170.

**APPLICABILITY/SCOPE OF ADMINISTRATIVE RULE**

- The waters within the City's jurisdiction that are identified to provide Chinook Salmon habitat include the Snohomish River and Snohomish River Estuary; North Creek, Swamp Creek, and shoreline nearshore habitat areas. The habitat for Bull Trout within the City is the

lower Snohomish River, the Snohomish River Estuary and shoreline nearshore marine environments. Development proposals within the City's jurisdiction which are located in areas that potentially impact these Chinook Salmon or Bull Trout bearing waters are subject to EMC 19.37.170, and this interim procedure. The 4d Rule was issued by NMFS on June 22, 2000. In the 4d Rule, "NMFS proposes a mechanism whereby entities can be assured that an activity they are conducting or permitting is consistent with ESA requirements and avoids or minimizes the risk of take of listed threatened salmonids. When such a program provides sufficient conservation for listed salmonids, NMFS does not find it necessary and advisable to apply ESA section 9(a)(1) take prohibitions to activities governed by those programs." This interim administrative rule will remain in effect until NMFS adopts a mechanism addressing the ESA program requirements applicable to the City of Everett. This administrative rule addresses both procedural and substantive requirements of development proposals until NMFS develops program requirements under section 4(d) of the Endangered Species Act that are applicable to the City of Everett.

- EMC 19.37.170.A requires an evaluation of any development proposed on or "within a distance which could impact fish and wildlife conservation areas," but does not include the specific distance (or proximity) within which a proposed development would require preparation of an Habitat Management Plan.
- The standard buffer for a Category 1 stream is 100 feet on each side of the stream (EMC 19.37.140.A.1). When a stream corridor is used by endangered or threatened species, the City may under certain circumstances require an increased buffer (EMC 19.37.140.C.2).
- The Shoreline Management Act requires an analysis of impacts of all substantial development proposals within 200 feet of the shoreline or its associated wetlands.
- A 200-foot "Management Zone" would provide for the analysis of projects within a distance which could impact fish and wildlife conservation areas.
- The management zone defines a management or catchment area within which projects are subject to a more intensive review. The purpose of this review is to screen out those projects that are not likely to impact Chinook Salmon or Bull Trout from those that could impact Chinook Salmon or Bull Trout. Those projects that may impact Chinook Salmon or Bull Trout are subject to additional biological assessment. The fish management zone will apply to all areas under shoreline jurisdiction (and their associated wetlands), plus Category 1 streams with listed fish species and their associated wetlands, together with tributaries with direct confluence to those streams and the associated wetlands to those tributary streams. The fish management zone is to be measured from the ordinary high water mark or where not able to be determined, top of bank. When a wetland is associated with these areas, the fish management zone is measured from wetland edge as delineated in accordance with state guidelines and EMC 19.37. Any proposed development activities within the fish

- management zone would trigger further evaluation of the biological impacts to Chinook Salmon or Bull Trout.
- The City's stormwater management requirements including the Surfacewater Ordinance (EMC 14.28.120) and Stormwater Manual include technical standards equivalent to the DOE Stormwater Manual. Compliance with these standards provides sufficient stormwater and surfacewater controls during this interim period.
- This administrative rule applies to the Snohomish River and the Snohomish River Estuary, North Creek and Swamp Creek. This rule also applies to all developments within 200-feet of the shoreline and their associated wetlands. This rule will apply to any proposed development located on any stretch of these stream corridors, the Snohomish River or Estuary; including the headwaters and tributaries with direct confluence to these streams or waterbodies.
- This interim administrative rule applies to all projects for which land use decisions have not previously been issued and which are not vested projects under EMC 19.44.010.<sup>1</sup>
- The language in EMC 19.37.170 provides broad authority for requiring an analysis or HMP for any development that "could impact fish and wildlife conservation areas" (emphasis added).

*If a development is proposed on or within a distance that could impact fish and wildlife conservation areas as described in this section, the applicant shall provide a habitat management plan (HMP) prepared by a qualified expert for evaluation by the City, State and Federal agencies. The HMP shall be based on sound habitat management practices and designed to achieve specific habitat objectives. The City shall ask the appropriate resource agencies to review and comment on the development impacts and provisions of the HMP.*

EMC 19.37 does not define a specific "management zone" or distance from fish and wildlife conservation areas within which an HMP is required.

ADMINISTRATIVE INTERPRETATION AND RULE. Pursuant to the authority granted to the Planning Director by section 41.040 of the zoning code, the following interim policy and administrative rule is made:

1. Any development proposal located within 200 feet of the following listed areas are considered to be within "A distance that could impact fish and wildlife conservation areas" and shall be subject to these additional evaluations:

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<sup>1</sup> EMC 19.44.010 contains the City's vesting provisions for land use actions. Please note however, that many applications of the Endangered Species Act are not barred by statute of limitation or vesting rules. See *T.V.A vs. Hill*, 437 US 153, 57L.Ed. 2d 117, 98 S.Ct. 2279(1978)

- a) Any Category 1 river or stream used by Chinook Salmon and Bull Trout (Snohomish River and Snohomish River Estuary; North Creek; and Swamp Creek; together with tributaries with direct confluence to those streams and the associated wetlands).
  - b) All areas under shoreline jurisdiction (and their associated wetlands).
  - c) The 200-foot area is to be measured from the ordinary high water mark (OHWM) or where not able to be determined, top of bank. When a wetland is associated with these areas, the distance is measured from the wetland edge as delineated in accordance with State guidelines and EMC 19.37.
2. The biological assessment shall focus on the potential impacts of the proposal on Chinook Salmon and Chinook Salmon habitat and that of Bull Trout. The analysis shall include:
    - a) An assessment of potential impacts of all proposed development activities on Chinook Salmon and Bull Trout, and Chinook Salmon and Bull Trout habitat;
    - b) An evaluation of mitigation requirements included in existing regulations and an evaluation of additional mitigation measures included in the proposal to mitigate impacts on Chinook Salmon and Bull Trout, and Chinook Salmon and Bull Trout habitat; and
    - c) A determination as to whether impacts will occur to Chinook Salmon and Bull Trout habitat after implementation of the required and proposed mitigation measures.
  3. If the proposed development or action would result in potential unmitigated impacts to fish and wildlife conservation areas, the applicant shall provide a Habitat Management Plan (HMP) prepared by a qualified expert. The HMP shall contain the information as required in Appendix A. The HMP shall be evaluated by the City, State and Federal agencies as required by EMC 19.37.170.
  4. The biological assessment and/or habitat management plan shall be prepared by a qualified engineer, hydrologist, biologist or geomorphologist who understands the requirements for properly functioning conditions for Chinook Salmon and Bull Trout. The consultant must demonstrate such expertise to the satisfaction of the City of Everett Planning Director who may require resumes, work examples or other information demonstrating professional expertise on relevant fisheries issues. The City will meet with the consultant and direct preparation of the biological assessment and/or habitat management plan. The City must review and approve the biological assessment/habitat management plan. In the event of a dispute regarding appropriate content in the assessment, the City may require additional studies or additional supporting information as provided for in EMC 37.070.B.
  5. At a minimum, all requirements and mitigation measures required in EMC 19.37 shall be met. Additional impacts identified in the HMP shall be mitigated based upon recommendations contained in the HMP.
    - a) Section 37.130.A classifies any “streams used by salmonids” as Category I streams, and under Section 37.140 “Category 1 streams shall have a minimum buffer of 100 feet on each side of the stream, except that properties under the jurisdiction of the shoreline master

program which abut category I streams may have a minimum buffer of less than one hundred feet when shoreline public access improvements may otherwise be permitted or required during the shoreline permit review process; or when a water-dependent or water-related use which requires a lesser buffer standard is approved during the shoreline permit review process.” When a wetland is adjacent to a stream, the required buffer is the greater of the required stream buffer or the buffer for the riparian wetland.

b) 37.100(4) provides that “When the minimum buffer for a wetland extends into an area with a slope of greater than 25%, the buffer shall be the greater of: a) the minimum buffer for that particular wetland; or b) 25 feet beyond the point where the slope becomes 25% or less.”

c) Section 37.140.D provides for standard stream buffer width reduction and subsection F provides for buffer width averaging. Buffer width reduction may be approved “only when there has previously been substantial legal alteration of the stream and/or buffer on the subject lot or adjoining lots, the Planning Director shall require buffer width averaging rather than allowing a buffer width reduction even when the proposal includes a stream and buffer enhancement plan that improves the functional value of the buffer and the stream. An enhanced buffer shall not result in more than a fifty percent reduction in buffer width, and the reduced buffer shall not be less than the minimum dimension allowed by buffer width averaging.”

d) Section 37.140.F provides that “Averaging shall not adversely impact the functions and values of the stream system. In either case, the adjusted minimum buffer width shall not be less than fifty percent of the standard buffer width.”

6. All development proposals located within any of these areas or drainage basins described by Section 1 above must at a minimum comply with the City’s Surfacewater Ordinance (EMC 14.28.120) and Stormwater Manual. Additional impacts identified in an HMP shall be mitigated based upon recommendations contained in the HMP.
7. If an applicant obtains, after a Section 7 consultation with the Corps of Engineers, a determination that the proposal will not harm Chinook Salmon and/or Bull Trout or an incidental take statement for Chinook Salmon and/or Bull Trout, the City may accept such as fulfilling the requirements of this interim policy and rule.
8. When development is proposed on a lot with a disturbed riparian corridor, the City may require that the habitat be enhanced by creating more diversity and eliminating any source of degradation as provided for under EMC 19.37.170.B, Fish and Wildlife Conservation Areas.

Signed: Paul A. Roberts by PA  
Paul A. Roberts, Director

Dated: 11-28-00

## **APPENDIX A**

### **I. Habitat Management Plan (HMP) Definition**

*An activity proposed by a public agency or private entity, and approved by the Planning Director, within an area which may impact a fish and wildlife conservation area to preserve, protect or enhance the fish and wildlife conservation area. (EMC 19.4.020)*

### **II. Content of Habitat Management Plan**

- A. The Director may require that all or a portion of the following is included in a habitat management plan:
- a) A map drawn to scale or survey showing the following information:
    - All lakes, ponds, streams, wetlands and tidal waters on or adjacent to the subject property, including the name (if named), and ordinary high water mark of each, and the stream or wetland category consistent with EMC 19.37.090 and 19.37.130.
    - The location and description of the fish and wildlife habitat conservation area on the subject property, as well as any potential fish and wildlife habitat conservation area within 200 feet of the subject property; and
    - The location of any observed evidence of use by a listed species.
  - b) An analysis of how the proposed development activities will affect the fish and wildlife habitat conservation area and any listed species.
  - c) Provisions to reduce or eliminate the impacts of the proposed development activities on any fish and wildlife habitat conservation area and listed species.
  - d) The HMP shall identify the specific habitat objectives. The HMP is designed to achieve and include recommendations regarding all actions taken to be necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term.
- B. A biological assessment which meets the requirements of the NMFS “A Guide to Biological Assessments” (revised March 23, 1999) will meet these requirements.